



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/354,058 | 07/15/1999 | JOHN CRESCENTI | 044463.0014 | 4549 |

29858 7590 09/30/2002

BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP
900 THIRD AVENUE
NEW YORK, NY 10022

EXAMINER

COLBERT, ELLA

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3624

DATE MAILED: 09/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/354,058

Applicant(s)

CRESCENTI ET AL. *h*

Examiner

Ella Colbert

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3624

DETAILED ACTION

Response to Amendment

1. Claims 1-19 and newly added claims 20-30 are presented for examination in this communication filed 06/24/02 entered as amendment A, paper no. 11.

Claim Rejections - 35 USC § 103

- 2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,005,122) Griffin et al, hereafter Griffin.

With respect to claims 1 and 20, Griffin teaches, a plurality of backup cells in col. 1, lines 41-45 comprising: a backup device executing a backup of the data stored on one of the plurality of groups of network devices in col. 1, lines 34-47, a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device in col. 1, lines 60-66, and each of the plurality of backup cells communicatively coupled to at least one other of the plurality of backup cells, and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells in col. 2, lines 10-30. Griffin did not teach, backup cells, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have backup cells and in view of Griffin's teaching of backup nodes to modify in Griffin because such a

Art Unit: 3624

modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

With respect to claim 20, Griffin teaches a management component (col. 1, lines 66-68 and col. 2, lines 1-2 –“Software management consists of a number of functions, including verifying that a user has a correct version, installing new versions as they are obtained, and keeping track of software distribution and use for licensing purposes”); and means for communicatively coupling to at least one other backup cell (col. 2, lines 51-57) whereby the first backup cell is capable of being controlled by a management component in the other backup cell (col. 2, lines 57-61 –“The management server node periodically performs a schedule scanner task in which it determines which previously scheduled operations have not been completed and performs those operations”).

With respect to claims 2 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells in col. 2, lines 51-61. With respect to claim 21, Griffin teaches a first backup node (cell) (col. 4, lines 10-15) and a plurality of backup nodes (cells) (col. 3, lines 21-35).

With respect to claims 3 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells via the management component in the same backup cell as the backup device in col. 2, lines 51-61. With respect to claim 21, Griffin teaches, the first backup cell (node) (see claims 2 and 21), *supra*.

With respect to claims 4 and 22, Griffin teaches, a first backup cell (node) in col. 2, lines 9-30 comprising: at least one backup device executing a backup of the data stored on the first group of network devices in col. 1, lines 43-47 and col. 2, lines 50-57; a first manager component, communicatively coupled to at least one backup device,

Art Unit: 3624

controlling the backup of the data to at least one backup device in col. 2, lines 51-61; a second backup cell communicatively coupled to the first backup cell, the second backup cell in col. 3, lines 21-44 comprising: a second manager component in col. 3, lines 67-68 and col. 4, lines 1-15; and the second manager component controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 1-4 and col. 6, lines 43-52. Griffin does not teach, a backup cell, however Griffin does teach a backup node and it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a backup cell and to modify in Griffin because such a modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

With respect to claim 5, Griffin teaches, the second manager component directly controls the backup of data to at least one backup device in col. 2, lines 51-57.

With respect to claim 6, Griffin teaches, the second manager component directly controls the backup of data to at least one backup device via the first manager component in col. 3, lines 9-20 and lines 67-68 and col. 4, lines 1-6 and lines 16-23.

With respect to claim 7, Griffin teaches, the network computing system comprising a first network device, where the first manager component is a software module executing on the first device, and the second manager component is a software module in col. 4, lines 62-68 and col. 5, lines 1-4.

With respect to claim 8, Griffin teaches, the network computing system further comprising a second network device, where the second manager component executes on the second network device in col. 6, lines 7-61.

With respect to claim 9, Griffin teaches, the second manager component executes on the first network device in col. 7, lines 13-41.

Art Unit: 3624

With respect to claim 10, Griffin teaches, at least one backup device executing backup functions for the data contained on the first group of network devices in col. 7, lines 32-47; and a first management component executing on the first network device, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 1-4. Griffin did not explicitly teach, the second manager component coupled to the first network device, the second manager component controlling the backup of the data to at least one backup device in col. 2, lines 51-57, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the second manager component coupled to the first network device, the second manager component controlling the backup of the data to at least one backup device in view of Griffin's teachings of providing management and a backup server and to modify in Griffin because such a modification would allow Griffin's system to be relatively cost effective and would permit the communication, the transfer, storage, and backup of data.

With respect to claim 11, this dependent claim is rejected for the similar rationale given for claim 9.

With respect to claim 12, this dependent claim is rejected for the similar rationale given for claim 9.

With respect to claim 13, Griffin teaches, the network computing system comprising a second group of network devices containing data, the second management component controls a backup of the data contained on the second group of network devices in col.6, lines 33-68.

With respect to claim 14, this dependent claim is rejected for the similar rationale given for claim 5.

Art Unit: 3624

With respect to claim 15, this dependent claim is rejected for the similar rationale given for claim 6.

With respect to claim 16, Griffin teaches, a backup device executing backup functions for the data contained on the first group of network devices in col. 6, lines 43-52; and a first network device, communicatively coupled to at least one backup device, controlling the backup of the data contained on the first group of network devices to at least one backup device in col. 7, lines 19-27. Griffin did not specifically teach, a second network device, communicatively coupled to the first network device, the second network device the second manager component controlling the backup of the data to at least one backup device in col. 7, lines 32-47, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second network device, communicatively coupled to the first network device, the second network device the second manager component controlling the backup of the data to at least one backup device in view of Griffin's teachings of providing management and a backup server and to modify in Griffin because such a modification would allow Griffin's system to be relatively cost effective and would permit the communication, the transfer, storage, and backup of data.

This independent claim is also rejected for the similar rationale given for claims 4 and 10.

With respect to claim 17, this dependent claim is rejected for the similar rationale given for claim 13.

With respect to claim 18, this dependent claim is rejected for the similar rationale given for claim 5.

Art Unit: 3624

With respect to claim 19, this dependent claim is rejected for the similar rationale given for claim 6.

With respect to claim 23, Griffin teaches, a backup device executing a backup of the data stored on at least one of the plurality of network devices in col. 1, lines 60-67 and col. 2, lines 1-9: a media component (col. 1, lines 62-66), configured to reside on and execute on any network device including a first network device (col. 1, lines 48-59), communicatively coupled to at least one backup device for controlling the backup of data to the backup device in col. 1, lines 43-47 and col. 2, lines 50-57; a client component (col. 3, lines 11-18), configured to reside on and execute on any network device including a second network device (server) and communicatively coupled to at least one media component (col. 1, lines 62-66), directing the media component to backup the data according to operational parameters established by the client component (col. 2, lines 10-30). Griffin does not teach, a management component, configured to reside on and execute on any network device including a third network device and communicatively coupled to at least one client component, directing the client component to backup the data according to backup parameters of the backup cell established by the management component, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a management component, configured to reside on and execute on any network device including a third network device and communicatively coupled to at least one client component, directing the client component to backup the data according to backup parameters of the backup cell established by the management component and to modify in Griffin because such a modification would allow Griffin's system to have a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

Art Unit: 3624

With respect to claim 24, a means for communicatively coupling each of the plurality of backup cells to at least one other of the plurality of backup cells and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells (col. 3, lines 36-68, col. 4, lines 1-15 and fig. 1).

With respect to claim 25, this dependent claim is rejected for the similar rationale as for claim 4, *supra*. Griffith teaches a client component (col. 3, lines 21-29).

With respect to claim 26, this dependent claim is rejected for the similar rationale as for claim 24, *supra*.

With respect to claim 26, this dependent claim is rejected for the similar rationale as given for claims 24-26, *supra*.

With respect to claim 27, this independent claim is rejected for the similar rationale as given for claim 20, *supra*.

With respect to claim 28, this dependent claim is rejected for the similar rationale as given for claim 20, *supra*.

With respect to claim 29, this dependent claim is rejected for the similar rationale as given for claim 21, *supra*.

With respect to claim 30, this dependent claim is rejected for the similar rationale as given for claim 22, *supra*.

Response to Arguments

4. Applicant's arguments filed 06/24/02 have been fully considered but they are not persuasive.

1. Applicants' argue: Absent from Griffin is any teaching or suggestion of a backup management component present on any network device other than a server node has been considered but is not persuasive because the Examiner interprets Griffin as

Art Unit: 3624

teaching a network service node controlled by a manager on a network, including backup and software distribution (col. 2, lines 33-48).

2. Applicants' argue: Griffin does not disclose the elements in claim 4, including a first backup cell comprising at least one backup device and a first manager component, and a second backup cell including a second manager component controlling the backup of data to the at least one backup device and Griffin does not disclose the elements in claim 10, including at least one backup device executing backup functions for the data contained on a first group of network devices; a first management component controlling the backup of the data to the at least one backup device, and a second management component controlling the backup of data to the at least one backup device has been considered but are not persuasive because Griffin teaches, a first backup cell (node) in col. 2, lines 9-30 comprising: at least one backup device executing a backup of the data stored on the first group of network devices in col. 1, lines 43-47 and col. 2, lines 50-57; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 2, lines 51-61; a second backup cell communicatively coupled to the first backup cell, the second backup cell in col. 3, lines 21-44 comprising: a second manager component in col. 3, lines 67-68 and col. 4, lines 1-15; and the second manager component controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 1-4 and col. 6, lines 43-52. Griffin does not teach, a backup cell, however Griffin does teach a backup node and it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a backup cell and to modify in Griffin because such a modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost and as for

Art Unit: 3624

claim 10, Griffin teaches, at least one backup device executing backup functions for the data contained on the first group of network devices in col. 7, lines 32-47; and a first management component executing on the first network device, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 1-4. Griffin did not explicitly teach, the second manager component coupled to the first network device, the second manager component controlling the backup of the data to at least one backup device in col. 2, lines 51-57, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the second manager component coupled to the first network device, the second manager component controlling the backup of the data to at least one backup device in view of Griffin's teachings of providing management and a backup server and to modify in Griffin because such a modification would allow Griffin's system to be relatively cost effective and would permit the communication, the transfer, storage, and backup of data.

3. Applicants' argue: Griffin does not disclose the elements of claims 16, 20, and 27 including a backup device executing backup functions for the data contained on the first group of network devices, a first network device controlling the backup of the data contained on the first group of network devices to at least one backup device, and a second network device, communicatively coupled to the first network device, the second network device controlling the backup of the data to at least one backup device has been considered but is not persuasive because Griffin is interpreted by the Examiner as teaching a backup device executing backup functions for the data contained on the first group of network devices in col. 6, lines 43-52; and a first network device, communicatively coupled to at least one backup device, controlling the backup of the data contained on the first group of network devices to at least one backup device in

Art Unit: 3624

col. 7, lines 19-27. Griffin did not specifically teach, a second network device, communicatively coupled to the first network device, the second network device the second manager component controlling the backup of the data to at least one backup device in col. 7, lines 32-47, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second network device, communicatively coupled to the first network device, the second network device the second manager component controlling the backup of the data to at least one backup device in view of Griffin's teachings of providing management and a backup server and to modify in Griffin because such a modification would allow Griffin's system to be relatively cost effective and would permit the communication, the transfer, storage, and backup of data. Applicants' arguments relating to claims 20 and 27 are "moot" because these are newly added claims.

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Art Unit: 3624

Inquiries

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday from 6:30 am -5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for Official communications and 703-746-5622 for Non-Official communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


E. Colbert
September 25, 2002


VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600